

market value of the conservation easement, or

(2) The entity may provide at least 50 percent of the purchase price in cash, of the conservation easement. This second option may be preferable to an entity in the case of a large bargain sale by the landowner. If this option is selected, the NRCS share cannot exceed the entity's contribution.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements based on lesser cost to FRPP.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement.

(c) The conveyance document or conservation easement deed used by the eligible entity may be reviewed and approved by the NRCS National Office and Office of the General Counsel (OGC) before being recorded.

(d) The conservation easement deed must identify the United States as a grantee with rights as set forth in the deed. Among the rights that the United States acquires in each conservation easement is the right to enforce the terms of the easement under specified conditions and the right to assume sole title to the conservation easement should the grantee abandon or attempt to terminate the conservation easement.

(e) As a condition for participation, a conservation plan will be developed by

NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide and approved by the local conservation district. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

(g) Prior to fund disbursement, NRCS must sign the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation shall be provided to NRCS by the cooperating entity.

(i) Impervious surfaces shall not exceed 2 percent of the FRPP easement area, excluding NRCS-approved conservation practices. However, the NRCS State Conservationist may waive the 2 percent impervious surface limitation on a parcel-by-parcel basis, provided no more than six percent of the easement area is covered by impervious surfaces. The NRCS State Conservationist must consider, at a minimum, population density, the ratio of open prime and important soil versus impervious surfaces on the easement area, and parcel size when deciding whether to waive the two percent limitation. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

[68 FR 26474, May 16, 2003, as amended at 71 FR 42572, July 27, 2006]